



Proof of Electoral Fraud by Electronically Generated Evidence

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Abstract

How difficult is it to prove electoral fraud by using e-generated evidence? An election as a democratic process of the people choosing their leaders by majority is not perfect in every sense owing to the devious acts of party candidates to bend the laws to favour them in cases of electoral malpractice. There may be tons of evidences to prove that a particular act has been done, do these evidences hold the same weight on admissibility as those generated or produced using computers? These are questions and issues tackled in this piece. It gives a detailed outline on the importance of establishing evidences generated by electronically means and conditions to satisfy in establishing them.

Keywords: Admissibility; E-generation; Evidence; Proof; Electoral fraud; Election

Introduction

Electronically generated evidence is described as a category of evidence produced by a computer; it is a statement that is admissible by virtue of section 34 of the Evidence Act 2011. This makes it an exception to hearsay evidence as provided by the act. The use of electronic signatures to execute a document has also been recognised by the Evidence Act in Nigeria. Prior to the advent of the new Evidence Act, electronically produced evidences following several legal arguments were described as less authentic, unoriginal and that it fell under the classification of hearsay evidence.

The admissibility of e-generated evidence reduces the burden of proof for parties asserting certain allegations; it saves the time of the court and parties mandated by law to prove their case beyond reasonable doubt or on preponderance of evidence. Contextually, e-generated evidence will be dissected subject to its importance in cases of allegations on electoral fraud. A key issue following the just concluded presidential elections in Nigeria is the case of alleged electoral fraud, the intendment of this piece is to decipher what electoral fraud entails, how e-generated evidences would be used to prove electoral manipulation or rigging of votes [1]. Nigeria practices the multi-party and uses the secret ballot voting method in line with its democratic means of choosing a representative. The questions on the mind of Nigerians in relation to this method of voting is whether results gotten from it can be relied upon, whether it is a transparent method, if it is not a transparent method can it be proven? If it to be proven, how can it be proven? The answer to these can be found in this article.

Discussion

Electoral fraud and election petition

“The ballot is stronger than the bullet” -Abraham Lincoln

Nigeria is a West African country practicing the democratic system of government. In a democracy there are certain privileges the rulers and the ones being ruled enjoy. One of such privileges is franchise being the right to vote and be voted for. It is the right to elect a representative. This democratic process is disrupted where there are cases of electoral fraud in the performance of the civic duties of Nigerian citizens [2]. Electoral fraud has no statutory definition however, by general knowledge it refers to the processes or election manipulation, voter suppression, vote buying, inflation of votes otherwise called rigging. It generally refers to the illegal interference with the process of an election aimed at increasing the votes to favour a candidate or reducing the votes of a rival candidate.

The Electoral Act 2022 provides for electoral offences on the election-day. It can be inferred from the provisions of section 126 of the Electoral Act that electoral violence at that polling unit is an offence punishable by conviction upon liability by imprisonment or payment of fine. By virtue of section 130(1) of the Electoral Act, proceedings to question an election commences upon the filing of a petition to an election tribunal (in the case of presidential election, the court of appeal) the court of appeal has original jurisdiction over election petition

An election petition is to be presented by persons entitled to do so under the Electoral Act. The ground of petition for an election conducted in Nigeria includes:

- I. That an election was invalid by reason of corrupt practices or non-compliance with provisions of the Act.
- II. That the respondent (the one whose election is complained of) was not duly elected by majority of lawful votes cast at an election.

These grounds are the core areas which Electoral fraud extends to, where substantial proof is needed. Electoral fraud can be construed to mean electoral offences in this context [3].

Having stated the basic provisions of the Act relating to Electoral conducts and offences, it is pertinent to note that, where there is a case of an electoral offence, a party or a presidential candidate of a party at the elections can Institute an action at the court of appeal by petition. In direct cases of electoral offences particularly rigging, there has to be substantial proof of these allegations. One of the means of proving these allegations is by tendering evidences as exhibits, some of which are evidences produced by the use of a computer [4].

It is necessary however, to delve into what constitutes an E-generated evidence, its admissibility and how it can be applied as proof of electoral fraud. Nigeria embraces the evolution of time and has incorporated the use of technological means to ascertain transparency and authenticity of votes at its elections. This technological change was ushered in following the presidential assent to the Electoral Bill. The Independent

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Received: 03-Mar-2023, Manuscript No. JCLS-23-91167; **Editor assigned:** 06-Mar-2023, PreQC No. JCLS-23-91167; **Reviewed:** 20-Mar-2023, QC No. JCLS-23-91167; **Revised:** 24-Mar-2023, Manuscript No. JCLS-23-91167; **Published:** 31-Mar-2023, DOI: 10.4172/2169-0170.1000382

Citation: Tamir A (2023) Proof of Electoral Fraud by Electronically Generated Evidence. J Civil Legal Sci 12: 382.

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National Electoral Commission (INEC), the independent body established by the Electoral Act is vested with the powers to conduct and supervise Electoral activities in Nigeria, in furtherance of its function in the Act to promote knowledge of sound democratic election process introduced the use of Bimodal Voter Accreditation System (BVAS) at polling units, the BVAS have features of dual fingerprint and facial biometric accreditation process to ensure genuine voters are accredited to vote [5]. It was intended to curb the incident of multiple voting. The INEC chairman also introduced a digital innovation of the INEC Result Viewing (IRev) portal to ensure the result management procedure is also transparent; results are to be counted upon the conclusion of the election and transmitted to the portal [6].

The absence of compliance to any of the Electoral directives provided under the Act paves way for the ground of non-compliance whilst engaging in acts cited as electoral offences leads to involvement in electoral fraud [7].

Admissibility of images as electronic evidence

The major issue that needs to be addressed following the concluded presidential election is whether or not the images in circulation showing votes at polling unit would be considered as electronic evidence under the definition of documents provided in the Evidence Act. Photographs are categorised as documents in the interpretation section of the Evidence Act, the description of document also extends to visual images but under the paragraph that proves for tapes and films. This inclusion brings one to become puzzled as to whether photographs are restricted to digitally produced pictures by digital camera or whether images taken by a mobile device falls under the category of photograph or visual images (under the paragraph that provides for the inclusion of tapes and films of visual images i.e. video) [8]. Images are distinct from photographs based on their methods of production; this is because while a photograph is produced with the use of a digital camera, an image is a visual object modified by a computer (a mobile phone in this case). This article has as its fulcrum images produced by the use of a mobile device. An image is a visual representation of an object. This work is confined to the electronically produced type [9].

Furthermore, having laid this foundational background as to whether images as documents can be used to prove specific cases on electoral fraud, it is conclusive that where there are several unaltered images over the Internet with credible sources and video tapes as well showing concrete proof over a fact in dispute on elections conducted at the polling units showing that the results announced and the votes counted do not tally, it will be admissible. The video tapes and images in circulation shows that resident electoral officers counted the votes and summed it up in the presence of voters but failed in some polling units to upload it to the IRev portal as stipulated in the electoral act [10].

Conclusion

This work embodies certain provisions and principles guiding the

admissibility of electronic evidence, its usefulness in proving electoral fraud in electoral petitions and addresses issues that are bound to arise in proof of the fact in issue. It provides for a conclusive outline on the need to admit visual images and video recordings to hasten the process, e-generated evidences can be used to prove the accurate number of votes counted to show whether there has been manipulation or rigging of the results. In order to prevent such instances, I strongly encourage a ballot guideline to be made by the Independent National Electoral Commission to supervise the activities of voting especially by ballot to ensure that there is transparency on votes counted. I would also recommend that a special security agent be set up to protect polling units to prevent disruption of voting to avoid disenfranchisement by result cancellation, in addition to the recommendations made, with relation to the technical innovations made by the Electoral body, I would strongly advise that the BVAS should include a data model that has features of summing up the total number of votes at a particular polling unit such that when a polling code is entered, it gives information as to the total number of votes made before it is transmitted to the portal. These are to be done timely.

Acknowledgement

None

Conflict of Interest

None

References

- Levitus S, John I, Wang J, Thomas L, Keith W, et al. (2001) Anthropogenic Warming of Earth's Climate System. USA 292:267-270.
- Roger A, Jimmy A, Thomas N, Curtis H, Matsui T, et al. (2007) A new paradigm for assessing the role of agriculture in the climate system and in climate change. Agric For Meteorol EU 142:234-254.
- Shahid TN (2013) Islam and women in the constitution of Bangladesh: The impact on family laws for Muslim women. FLJS UK 1-11.
- Shehabuddin E (2008) Reshaping the holy: Democracy, development, and Muslim women in Bangladesh. CUP NY: 1-304.
- Hossain K (2003) In Search of Equality: Marriage Related Laws for Muslim Women in Bangladesh. J Int Women's Stud MA 5:1-38.
- Elias T (2015) Gaps and Challenges in the Enforcement Framework for Consumer Protection in Ethiopia. Miz L Rev EA 9:1-25.
- Yoram J, Didier T, Olivier B (2002) A satellite view of aerosols in the climate system. Nature UK 419:215-223
- Ramanathan P, Crutzen, J, Rosenfeld D (2001) Aerosols, climate, and the hydrological cycle. Nature UK 294:2119-24
- Hassan A, Qadri MA, Saleem M (2021) The Muslim Family Law Ordinance 1961: Pioneer of Women Empowerment in Pakistan. JRSP PAK 58:1-8.
- Abdullah R, Monsoor T, Johari F (2015) Financial support for women under Islamic family law in Bangladesh and Malaysia. Taylor and Francis UK 21:363-383.